THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.16508 OF 2006
WRIT PETITION NO.16526 OF 2006
AND
WRIT PETITION NO.17546 OF 2006

DATED: 29-03-2007

In WRIT PETITION NO.16508 OF 2006:

Between :

A. Ramesh Reddy .. Petitioner

And

1. The Commissioner of Prohibition & Excise, Hyderabad.,
And 3 others. .. Respondents

In WRIT PETITION NO.16526 OF 2006:

Between :

Y. Uday Kumar .. Petitioner

And

1.The Commissioner of Prohibition & Excise, Hyderabad.,
And 3 others. .. Respondents

AND

In WRIT PETITION NO.17546 OF 2006:

Between :

B. Krishna .. Petitioner

And

1.The Commissioner of Prohibition & Excise, Hyderabad.,
And 3 others. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.16508 OF 2006
WRIT PETITION NO.16526 OF 2006
AND
WRIT PETITION NO.17546 OF 2006

COMMON ORDER :

The petitioner in W.P.No.16508 of 2006 was granted a licence in Form A-4 under the provisions of A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short, 'the Rules') for the period 2006-08 for sale of Indian-made Foreign Liquor by shop in Ward No.7 of Mancherial Municipality, Adilabad District, being the highest bidder in the auction conducted pursuant to the notification dated 27-5-2006 issued by the District Collector, Adilabad under Rule 5 of the Rules.

The petitioner in W.P.No.16526 of 2006 was granted a similar licence pursuant to the same notice of auction issued by the District Collector, Adilabad for sale of Indian-made Foreign Liquor by shop in Ward No.20 of Mancherial Municipality, Adilabad District.

The petitioner in W.P.No.17546 of 2006 was the highest bidder in the auction conducted in pursuance of the notice of auction dated 27-5-2006 issued by the District Collector, Nellore in respect of the shop at Pedda Pavani Road, Kavali, Nellore District.

It is not in dispute that the auction in respect of Shop No.9, Mancherial Rural (Teegalpahad Village, Shop No.1) and Shop No.17 of Mancherial Rural (Thalapalli Village, Shop No.5) of Mancherial Mandal notified at Sl.Nos.60 & 68 respectively in the Gazette dated 31-7-2006 in respect of Adilabad District could not be concluded and

consequently no licences were granted in respect of the said shops pursuant to the notification dated 31-7-2006. Similarly, the auction in respect of the shop at Vinjamur Village of Vinjamur Mandal notified at Sl.No.142 in the Auction Notification dated 31-7-2006 published in respect of Nellore District also could not be concluded.

While so, fresh notifications dated 31-7-2006 in respect of both Adilabad and Nellore Districts proposing to conduct auction on 7-8-2006 for grant of lease of right to sell Indian-made Foreign Liquor by shop for the lease period 2006-08 in respect of undisposed of shops including Shop Nos.9 & 17 of Mancherial Mandal (Rural) in Adilabad District and the shop at Vinjamur Village, Vinjamur Mandal of Nellore District. Surprisingly, in the fresh auction notification the said shops were proposed to be shifted/relocated to Shop No.12, Ward No.7 of Mancherial Municipality; Shop No.13, Ward No.20 of Mancherial Municipality and Ward No.18, Pedda Pavani Road, Kavali Municipality respectively and they were accordingly notified in the fresh notifications dated 31-7-2006 inviting bids from the intending tenderers for grant of lease.

Aggrieved by the said action of the respondents in proposing to shift/relocate the shops originally notified in the Notification dated 27-5-2006 to different areas under the fresh notifications dated 31-7-2006 these three writ petitions are filed.

The contention of the petitioners is that since the location of shops was fixed by the Commissioner of Prohibition & Excise before publication of the Auction Notice dated 27-5-2006 under Rule 5 of the Rules, the respondents have no power to shift/relocate the said shops to a different area for the purpose of the fresh auction proposed to be conducted under the Notification dated 31-7-2006. While pointing out that in exercise of the powers conferred under Rule 4 of the Rules the Commissioner of Excise had issued a Circular dated 25-5-2006 fixing the number of shops as well as the location of the same on the basis of which the respective District Collectors-cum-Auctioning Authorities

issued the Auction Notices dated 27-5-2006, it is contended that the number and location of the shops so fixed by the Commissioner of Prohibition & Excise cannot be altered on any ground whatsoever in the absence of any provision under the A.P. Excise Act or the Rules made thereunder empowering the respondents to do so.

In the counter-affidavit filed on behalf of the respondents, it is stated that having regard to the fact that some of the shops notified in the Auction Notice dated 27-5-2006 remained undisposed in various Districts, the Commissioner of Prohibition & Excise vide proceedings dated 27-6-2006 issued instructions to issue notifications for re-tendering the left over shops. The Commissioner of Prohibition & Excise had also relocated the shops after ascertaining the reports from the concerned Station House Officer and Assistant Prohibition & Excise Superintendent and pursuant thereto new areas were notified under the fresh Auction Notice. The said shops were accordingly finalized and the successful bidders were granted licences in Form A-4. It is also contended that shifting of area/relocation of the shops to new areas has not affected the business of the petitioners or any other licensee and at any rate since the petitioners cannot claim any fundamental right in the matter of trading in liquor which is exclusively a matter of privilege granted by the Government, the writ petitions are misconceived and liable to be dismissed.

I have heard the learned Counsel for both the parties in detail.

For proper appreciation of the rival contentions raised by the learned Counsel for the parties, it is necessary to note the relevant statutory provisions governing the grant of lease of right to sell Indian Liquor and Foreign Liquor.

In exercise of the powers conferred by Section 72 read with Sections 17, 28 and 29 of the A.P. Excise Act, 1968, and Ordinance 5 of 2005, the Governor of Andhra Pradesh made the Rules called the A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short, 'the Rules'). The said Rules issued

under G.O.Rt.No.998, Revenue (Ex.II) Department, dated 24-5-2005, are made applicable for the grant of privilege by shop, conditions governing thereof and transport of Indian Liquor and Foreign Liquor by the leaseholder. Rules 3, 4 and 5 of the said Rules which provide for grant of lease of right to sell Indian Liquor and Foreign Liquor and for establishment of shops run as under :

*"**3. Lease of Right to sell Indian Liquor and Foreign Liquor :***

Subject to the provisions of these rules the grant of lease of right to sell Indian Liquor and Foreign Liquor by shop shall ordinarily be granted by inviting sealed tenders from the public after due notification. The lease shall be for a period of one year or part thereof.

Provided that where the Commissioner considers it expedient to grant the lease of right to sell Indian Liquor and Foreign Liquor by shop in any other manner, he shall for the reasons to be recorded in writing, do so.

4. Establishment of Shops:-

The Commissioner of Proh. & Excise having due regard to requirement, public order, health, safety and other factors as thinks fit, may fix the number of shops to be established in an area/locality before the publication of the Auction Notice under Rule 5.

5. Auction Notice :

(1) Where it is proposed to grant the lease for sale of Indian Liquor and Foreign Liquor by shop a notice of the proposed auction containing the particulars mentioned in sub-rule (2) shall be published, at least (7) seven days in advance of the date of auction, by the Collector of the District in the District Gazette or in such other manner as the Collector may deem fit.

(2) The auction notice shall contain the following particulars :

(i) Serial Number and the name of the area / locality where the shop will be established.

(ii) The last date, time and place for receipt of tenders;

(iii) The place of auction with time and date;

(iv) The conditions governing the auction;

(v) The lease period and

(vi) Any other matter which may be considered

necessary by the auctioning authority."

A combined reading of the above Rules makes it clear that the lease of right to sell Indian Liquor and Foreign Liquor by shop shall ordinarily be granted by inviting sealed tenders from the public. Before issuing such auction notice, the Commissioner of Prohibition & Excise has to fix the number of shops to be established in an area/locality. It is also relevant to note that Rule 5 of the Rules specifies the particulars to be mentioned in the auction notice which include the name of the area/locality where the shop will be established.

In the cases on hand, it is not in dispute that the Commissioner of Prohibition & Excise, A.P., Hyderabad having considered the requirement of the localities and other relevant factors issued the Circular dated 25-5-2006 fixing the number of shops to be established. On the basis of the said proceedings, the concerned District Collectors issued the auction notices dated 27-5-2006 inviting sealed tenders from the public for grant of leases by shop in the areas identified by the Commissioner in Adilabad and Nellore Districts. Pursuant thereto, leases were granted to the successful bidders in respect of many areas including the writ petitioners. However, for various reasons, the shops identified in some of the areas remained undisposed which were proposed to be auctioned under the impugned notifications by relocating the shops to different areas. The question is whether such relocation/shifting is permissible under law.

At the outset, it is to be noted that Rule 21 of the Rules which provides for such a situation runs as under :

> *"**21. Sale by outlets of A.P.B.C.L. and the Distillery/Brewery Licenceholders:-** (1) The auctioning authority with the approval of the Commissioner of Prohibition & Excise may permit the A.P.B.C.L. or a holder of a Distillery/Brewery licence under the Act to open outlets for the sale of IL & FL in such*

areas/localities where the privilege of sale by shop could not be disposed off in the auction or when a lease already granted is cancelled and the same could not be re-auctioned for any reason.

(2) The Commissioner of Prohibition and Excise may permit the A.P.B.C.L. to open outlets for the sale of IL & FL anywhere in the State whenever he deems necessary in public interest."

On a plain reading of the above provision, it is clear that in case the privilege of sale by shop is not disposed off in the auction for any reason, the auctioning authority with the approval of the Commissioner of Prohibition & Excise has to permit the A.P.B.C.L. or the Distillery/Brewery Licence-holder under the Act to open outlets for sale of IL & FL in such areas.

In certain circumstances, re-auction of the right of sale in the areas/localities already identified by the Commissioner of Prohibition & Excise is also permissible as provided under Rule 20. However, there is absolutely no provision under the Rules empowering either the auctioning authority or the Commissioner of Prohibition & Excise to relocate the shop identified under Rule 4 to another locality/area for the purpose of conducting fresh auction on any ground whatsoever.

Even Sub-rule (3) of Rule 29 of the Rules which provides for shifting of the licensed premises i.e., after granting the lease to the successful bidder, cannot be made applicable to relocation of the shop originally identified in a particular area for the purpose of reauction. Hence, the mere fact that the Commissioner of Prohibition & Excise had issued a circular dated 25-6-2006 relocating the undisposed off shops does not validate the impugned auction notifications since such relocation cannot be traced to the power conferred under Rule 4 or any other provision.

In identical circumstances, W.P.No.215 of 2007 has been allowed by this Court by order dated 1-3-2007 thereby declaring the licences granted pursuant to the fresh auctions after relocating the

shops as arbitrary and illegal.

For the aforesaid reasons, all the three Writ Petitions are allowed as prayed for. The Form-A4 licences granted to the respondent No.4 in W.P.Nos.16508, 16526 & 17546 of 2006 respectively are accordingly hereby set aside. No costs.

G. ROHINI, J.

Dt. 29-3-2007
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